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Political Law Compliance: What Every Senior Manager Should Know



- Any time you communicate or interact with a public official, or spend money and a public official participates in the event or occasion, it is likely you are engaging in regulated activity.
 - If related to election or campaign, campaign finance and pay-to-play considerations.
 - If providing a personal benefit, gift considerations.
 - If in connection with influencing an official decision, lobbying considerations.

When Does a Company Need to Track Lobbying?



- Three requirements must be met to trigger LDA registration and reporting requirements:
 - A company must have at least one employee who spends 20% or more of his or her working time engaging in lobbying activity;
 - That same employee must have 2 or more lobbying contacts; and
 - The company must spend more than \$12,500 on such lobbying activity over a 3-month period.
 - » Lobbying firm threshold: lobbying income for a particular client must exceed \$3,000 over a 3-month period.
- Register only the entity that employs the lobbyists.

What is Lobbying Activity?



- Lobbying activity
 - Lobbying contacts; and
 - Research and preparation for such contacts (*i.e.*, work done with the intent that the results will be used for lobbying contact).
 - » Includes strategizing, planning, possibly other background work
- Covered officials
 - Lobbying contact includes making the following communications in an attempt to influence legislation, federal contracts, or any other position of the federal government:
 - » Communications with Congressional members and staff; and
 - » Under Method A (LDA), communications with Covered Executive Branch Officials (*i.e.*, White House Staff, Military Personnel at or over pay grade O-7, and Presidential and Schedule C Appointees but not career SES employees).
 - > Plum book: <http://www.gpo.gov/fdsys/pkg/GPO-PLUMBOOK-2012/content-detail.html>



- Under Method C (IRC), lobbying contact includes communications with Covered Executive Branch Officials (*i.e.*, White House Staff, top two officials in any office of the EOP, and Cabinet-level officials and their deputies).
 - » Includes communications with any executive branch official regarding federal legislation
- Other differences between Method A and Method C
 - Method A
 - » Only covers federal lobbying
 - » Does not cover grassroots lobbying
 - » No de minimis exception
 - Method C
 - » Includes federal lobbying plus state legislative and limited local lobbying
 - » Covers grassroots lobbying
 - » The time of employees with no contacts and who spend less than 5% of their time on lobbying activity does not need to be reported



- Any discussion with a public official or employee, elected or non-elected, is potentially regulated activity.
 - This goes beyond attempting to influence legislation.
 - Attempts to influence any decision of an executive branch agency, including financial arrangements and contracts (e.g., seeking business from agency) may be considered lobbying. Procurement lobbying.
 - Educating is lobbying.
 - » Responding to a formal inquiry by a government official is in some instances exempt.
 - » Responding to an informal request by a government official is rarely exempt.
 - Strategic planning
 - » Working with a trade association strategizing on a legislative agenda or discussions on how to respond to a legislative proposal.

Direct and Grassroots Lobbying: What is Tracked?



- What is grassroots lobbying?
 - Is communicating with your own employees grassroots lobbying?
 - Do you need a call to action?
 - Is a fly-in grassroots or direct lobbying?
 - Town hall meetings
 - Meet and greets
 - Attending fundraisers
 - Site visits

Backup Information and Reporting Issues



- Contemporaneous tracking of time
 - The identity of public officials is not disclosed
 - The issues worked on are disclosed only if a lobbyist works on the issues, not a non-lobbyist employee
- Documentation supporting contacts with covered officials

Gift Compliance: LD-203 Certification



- With each semi-annual report, lobbyists, lobbying firms, and lobbyist employers must provide a certification that (i) they are familiar with the House and Senate gift rules, and (ii) they have not provided, requested, or directed a gift (including travel) to a Member or staff with knowledge that receipt of the gift would violate such rules.



- Any time you pull out your credit card or spend money and a public official participates in the event or occasion, it is likely you are engaging in regulated activity.
- Providing anything of value to anyone (especially a public official or employee) triggers gift, and possibly lobby and pay-to-play, rules.
- In some jurisdictions, a cup of coffee may violate the law.
- In-kind gifts are also covered. Offering a ride in a car or use of equipment in a facility is something of value and is included in the definition of gift.
- You cannot avoid the restrictions by not putting in for the expense. Regardless of whether it is submitted for reimbursement, the expenditure is regulated.



- Many gift laws impose penalties on the donor and the recipient. The penalties can result in personal liability.
- Gifts laws often involve criminal and civil exposure for the donor and the public official/government employee.
- Don't rely on the public official for advice on legality.
- There is no uniformity of gift laws. One size does not fit all situations.
- Many counties and cities have their own gift laws which may be stricter than state law.



- Employee compliance training
- Lobby reports: tracking employee time (lobbyists and non-lobbyists) and capturing all covered expenditures
- Gift ban: preclearing all employee expenses on behalf of federal officials
- Semi-annual certification: compliance with gift and lobby disclosure rules
- Policies on lobby disclosure, gifts, and campaign contributions
- Involvement of the Board of Directors

Guidelines for Processing Contribution Checks and Gift Requests



- In deciding as to whom to contribute or entertain, one should be careful when putting in writing the justification or reason for a contribution or gift.
- To the extent that one puts such justification or reason in writing, one should:
 - Not mention any particular past, present, or future official action (e.g., a vote on a particular legislation or other governmental decision).
 - Not characterize the contribution as helping to gain access to the candidate or a "seat at the table."
 - Limit the writing to general reasons for supporting the candidate (e.g., the candidate's positions on general issues and the leadership positions held by the candidate).
- Timing of contributions – OCE investigation

Compliance Issues Relating to E-mails



- Beware that the informality of language in e-mails can create compliance issues.
- By generating an e-mail, you are creating a document which is generally discoverable by the government in an enforcement action or by a private party in a law suit.
- There is no way to actually delete an e-mail (even if you press the “delete” button). Also, the recipient of the e-mail has a copy in his or her computer system.
- If you have to use e-mail, beware of making spontaneous statements that could erroneously imply legal violations or be embarrassing if it is produced or becomes public.
 - Appearance is sometimes as important as reality.
- Generally, e-mails should only contain language that you would feel comfortable putting in a formal memo to the General Counsel.



- Donor Liability – HLOGA amends the Lobbying Disclosure Act ("LDA") to make lobbyists, lobbying firms, and lobbyist employers liable for providing gifts or travel not permitted by Senate or House rules.
- Increased Penalties – HLOGA amends the LDA to increase civil penalties for violations and add criminal penalties (up to 5 years in prison and/or fines under Title 18 of the U.S. Code). HLOGA sets a "knowingly and corruptly" standard for criminal penalties.
- There is still a 60-day cure provision for reporting violations, but not for violations of the gifts law, which are the basis of the LD-203 certification.



- When making contributions to federal, state, or local candidates, party committees, or PACs, applicable federal, state, and/or local laws may come into play
 - These laws may prohibit or limit contributions or impose reporting requirements
 - » Imposed on company, PACs, individuals
 - » Monetary and in-kind
 - > Including corporate resources, facilities, personnel
- Should corporations give to 527s, Super PACs, and political 501(c)(4)s? Impact of *Citizens United*.
 - RGA/DGA
- Implications of being a federal contractor



- Some of the more notable activist shareholders introducing proxy:
 - Center for Political Accountability
 - » CPA-Zicklin index
 - Trillium Asset Management
 - New York State Retirement System
 - New York City Employees Retirement System
 - Domini Social Investments
 - Walden Asset Management
 - Sisters of Mercy Reg. Community of Detroit Charitable Trust



- Proxy proposals have requested disclosure of one or more of the following:
 - Original and most common request:
 - » Corporate and PAC contributions to any candidate, party committee, political committee, 527 political organization, or non-profit (501(c) organization)
 - » Policy and reasons for making political contributions
 - » Identity of those involved in decision to make contributions
 - Lobbying expenses
 - » Trend toward seeking more lobbying information
 - In the last few years, requests expanded to include portion of trade association dues attributable to political activity (SEC No Action Letter to Boeing (February 14, 2011))
 - Institutional investors press companies for disclosure of lobbying in 2015
 - » Shareholder resolutions filed with more than 50 companies by 60 institutional and individual investors

How to Avoid Pay-to-Play Violations



- Avoid linkage: when making contributions or donations (political or charitable) or providing gifts
- Make sure that your consultants are properly vetted
- Comply with specific conflicts of interest laws (dual hatted employees and post-employment rules)
- Be aware of strict liability pay-to-play laws (federal, state, and local)
- Preclear contributions for compliance
 - Should senior executives preclear personal contributions?



- Civil penalties for FECA violations
 - Civil penalties for violations involving reimbursed contributions are no less than 300% and no more than 1000% of amount in violation.
- Criminal penalties for FECA violations
 - Maximum jail time for lesser violations (involving less than \$25,000) is 2 years.
 - Maximum jail time for greater violations (involving \$25,000 or more) is 5 years.
 - Violations subject to Federal Sentencing Guidelines.